

Date of decision: 28-2-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(28-2-1996)

Mrs. Sangita Pawah, for  
Mr. P.M. Thakkar for the petitioner.  
Mr. R.J. Oza for the respondents.

ORAL JUDGMENT:

Heard the learned counsel for the parties.

The petitioner has challenged the order annexure-E dated 16-5-1989 passed by respondent No.2 by which he was

dismissed from service on the ground that the Medical Board declared him permanently unfit for Government service. The facts which are not in dispute, briefly stated, are as follows:

The petitioner was appointed as driver in the year 1980. While he was on duty on 11-12-1981 he met with an accident and he sustained injuries. The accident involved between the jeep, which he was driving, and a truck. The petitioner remained hospitalised for a long period. He resumed his duties on 28th December, 1983 on the basis of the medical certificate issued by the President of the Standing Medical Board, Irwin Group of Hospitals, Jamnagar. Considering the medical certificate, he was entrusted with the work of chowkidar. Though the petitioner was allowed to resume duty as Chowkidar, his pay was protected. Subsequently the driving licence of the petitioner was cancelled by the Asst.Regional Transport Officer, Jamnagar on 8-10-1986. Consequent to the cancellation of the driving licence of the petitioner, under order dated 16-2-1987 the respondents reverted the petitioner to the post of Chowkidar. There was no question of reversion because the petitioner was appointed on the post of driver, but his reversion meant reduction of his payscale to that of class IV employee and withdrawal of the protection of pay which was given earlier. This reversion was challenged by the petitioner by filing civil suit No.1598 of 1987 in the Civil Court at Jamnagar. On 15-2-1989 the Medical Board declared the petitioner permanently unfit for Government service. Relying on this medical certificate the respondents have, by the impugned order, dismissed the petitioner from service.

2. The petitioner had resumed his duties on 28th December, 1983 and on the basis of the certificate given by the Medical Board he was considered fit to work as chowkidar and he continued to work as such till 16th May, 1989. The petitioner was considered fit to work as Chowkidar for all these years, that is, for more than five years. But, abruptly on the basis of the medical certificate dated 15-2-1989 the impugned order of dismissal from service has been passed.

3. I find sufficient merit in the contention raised by the learned counsel for the petitioner that because the petitioner has challenged the order of reversion (i.e., the order of reduction in the pay-scale) the order of dismissal has been passed as a counter-blast. From the reply to the writ petition it gives out that the order of dismissal is based solely on the medical report, though the respondents have not come up with the case that the petitioner was not medically fit to perform the duties of chowkidar. During the course of argument, learned counsel for the respondents

very fairly conceded that at no point of time the respondents have found any defect or any slackness or inefficiency in the duties performed by the petitioner as a chowkidar. He further conceded that there was no complaint whatsoever against the petitioner regarding performance of his duties as a watchman during all these years.

4. I have considered the averments made in the reply to the writ petition. I consider it proper to make reference to the averments made particularly in para 10 of the reply. The respondents have admitted that the performance of the petitioner on the post of chowkidar has no relevance as he has been declared permanently unfit by the Medical Board. From these averments it clearly emerges that nothing wrong has been found in the performance of the duties of Chowkidar by the petitioner, but the respondents have acted only on the basis of the medical report. The petitioner was asked by the respondents under letter dated 12th December, 1986 to give his consent that he is willing to work as peon or else he should opt for injury pension. To this letter the petitioner gave reply that if his pay-scale of driver is protected he is willing to work as a peon. Thereafter the respondents have reduced the pay-scale of the petitioner from that of driver to that of class IV employee vide order dated 16-2-1987. I do not consider it proper to examine the validity of the order dated 16-2-1987 as the suit is pending before the civil court. But from this order it is clear that the respondents have considered the petitioner to be medically fit to perform the duties of a class IV employee on the post of chowkidar or peon. Once this position is accepted and the petitioner has worked for more than five years as such, I fail to see any justification in the action of the respondents to dismiss the petitioner from service only on the basis of the medical report. It is true that the medical report has gone against the petitioner, but nevertheless when the respondents have considered the petitioner to be fit to discharge the duties of a watchman or peon they should have acted fairly rather than to mechanically act upon the medical report. The way and the manner in which the respondents have proceeded gives out the impression as if they wanted to penalise the petitioner for his action of challenging the order of reduction of his pay-scale from the post of driver to that of class IV employee. Once the respondents have agreed in principle and on the basis of the medical report considered the petitioner as fit to discharge the duties of chowkidar and agreed to continue the petitioner without protection of pay-scale, I do not find any good reason to dismiss him from service.

5. Looking to the facts of the case it appears that the petitioner insisted for examination by Medical Board

regarding his fitness to discharge the duties as driver. Second Medical Board was constituted on the basis of the petitioner's own application, after his driving licence was cancelled and his pay was reduced, to get the fitness certificate for the post of driver. From the facts which are on record it also comes out that the Medical Board has also examined the petitioner keeping in mind that he is a driver and the certificate has to be given regarding his fitness to discharge the duties of a driver. Before dismissing the petitioner from service the respondents have not taken specific medical opinion regarding his fitness to continue as a watchman or peon in class IV post. It was necessary for the respondents to do so because on the basis of the Medical Board's report the petitioner was allowed to resume duties and he was considered fit to discharge the duties of chowkidar or peon.

6. The petitioner suffered disability as a result of the accident caused during the course of his employment due to which he became incapable to perform the duties on the post of driver. It was desirable on the part of the respondents to make every endeavour to adjust the petitioner in a post on which he would be suitable to discharge duties. In the present case though the respondents have acted as a model employer and have also taken a humane approach in the matter, and the petitioner, though he was not medically fit to perform duties of driver, was taken in alternative employment with the protection of pay also, difficulties have arisen when the petitioner has challenged the order of reversion and he sought medical examination again for fitness as driver, after his licence was cancelled by the Assistant Regional Transport Officer. The petitioner who is a law abiding employee has rightly made application because he has faced twofold difficulties, that is, reversion by way of reduction in the pay-scale and cancellation of his driving licence. I may observe at the cost of repetition that the attempt was made by the petitioner only to get the medical fitness certificate for the post of driver. That was the only limited reference made to the Medical Board. Looking to the facts of the case I am satisfied that there was only limited reference to the Medical Board which is further fortified from the fact that the earlier Medical Board has certified the petitioner to be fit to perform the duties of watchman.

7. Looking to the facts of the present case I am satisfied that the dismissal of the petitioner from service is wholly unjustified and unwarranted. In such matters, once the respondents have taken into consideration the deformity of the petitioner and adjusted him on an alternative job, I fail to see any justification in acting upon the medical

report which was sought only for the purposes of fitness of the petitioner to perform the duties of driver, and not for dismissal from service of watchman.

8. In the result the writ petition succeeds. The order dated 16th May, 1989 produced at annexure-E to the petition is quashed and set aside. The respondents are directed to reinstate the petitioner forthwith on the post of watchman or any other class IV post. The petitioner shall be entitled to all the consequential benefits thereof. Rule made absolute accordingly. No order as to costs.